UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELSEVIER INC., ELSEVIER B.V., ELSEVIER LTD. Plaintiffs, v. SCI-HUB d/b/a WWW.SCI-HUB.ORG, THE LIBRARY GENESIS PROJECT d/b/a LIBGEN.ORG, ALEXANDRA ELBAKYAN, JOHN DOES 1-99, Defendants.	Index No. 15-cv-4282 (RWS)

DECLARATION OF PAUL F. DODA, ESQ. IN SUPPORT OF PLAINTIFFS' APPLICATION FOR AN ORDER AUTHORIZING ALTERNATIVE SERVICE OF PROCESS ON DEFENDANTS AND ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION

I, PAUL F. DODA, declare as follows is true and correct:

1. I submit this declaration in support of Plaintiffs' application for entry of a preliminary injunction.

2. I am Global Litigation Counsel at Elsevier Inc. In that capacity, I am responsible for and familiar with Elsevier's copyright enforcement matters, including its investigation of and responses to online piracy and content theft. My office is located at 360 Park Avenue South, New York, New York 10010.

3. I have been employed by Elsevier since 2007, and have been a lawyer within the wider Reed Elsevier group of companies (now known as RELX Group) since 2001.

A. Elsevier's ScienceDirect Platform

4. Elsevier is the world's leading publisher of peer-reviewed scholarly journals. Elsevier currently publishes more than 2,500 scholarly journals and approximately 365,000 articles annually in those journals. Elsevier is also a leading publisher of scholarly books, publishing approximately 33,000 books. Elsevier's scholarly journals include world-renowned publications such as *The Lancet* and *Cell*.

5. Elsevier operates "ScienceDirect," an online platform through which users can access the contents of Elsevier-published scientific, technical, engineering, and medical journals and book chapters. As of March 30, 2015, the ScienceDirect platform contains approximately 12.3 million scientific journal articles and 33,000 books.

6. Elsevier owns the copyrights in a substantial portion of the materials it makes available through ScienceDirect. In addition, Elsevier is the exclusive licensee of the copyrights in a majority of the works on ScienceDirect in which it does not own the copyright.

7. Elsevier, as a routine business practice, registers the copyrights in many of its scientific, technical, engineering, and medical books published in the United States with the U.S. Copyright Office. Elsevier also routinely registers the copyrights in its U.S. scientific journals with the U.S. Copyright Office through serial registration.

8. Elsevier B.V. owns the registered trademark in the ScienceDirect name. The mark was originally issued to Elsevier Science B.V. on February 23, 1999, and was transferred to Elsevier B.V. as a change of name on January 9, 2003. True and correct copies of the registration certificate for the ScienceDirect mark and its assignment to Elsevier B.V. are attached hereto as Exhibit A.

B. Elsevier Content Unlawfully Distributed By The Library Genesis Project and Sci-Hub

9. Elsevier has not at any time authorized the Library Genesis Project, Sci-Hub or Alexandra Elbakyan to distribute any of Elsevier's copyrighted works through any channel, including through the libgen.org or sci-hub.org websites.

10. Elsevier has attempted to have its copyrighted works removed from the Library Genesis Project through the use of "notice-and-takedown" demands as contemplated by the Digital Millennium Copyright Act, Title 17, United States Code, Section 512. The Library Genesis Project has routinely failed to remove Elsevier's works from its repository in response to these lawful demands.

11. As part of its investigation into Defendants' piracy, Elsevier has obtained from the Library Genesis Project website databases containing bibliographic information concerning the works distributed through the Library Genesis Project website. At my direction, an Elsevier employee has reviewed a list of Elsevier-published titles which the Library Genesis Project claims to make available to its users. Based on Elsevier's regular practices, I can confirm that a substantial number of those works are those in which Elsevier owns federally-registered copyrights.

12. In order to verify that the Library Genesis Project is, in fact, distributing Elsevier's copyrighted works through the libgen.org website, on or about March 19, 2015, from computers located in the Southern District of New York, Elsevier officials acting at my direction downloaded an article entitled "*The Varus Ankle and Instability*" from www.libgen.org.[1] A true and correct copy of this article is attached hereto as Exhibit B. This article is legally available to authorized users through ScienceDirect at the URL

[1] Georg Klammer, Emanuel Benninger, and Norman Espinoza, *The Varus Ankle and Instability*, FOOT AND ANKLE CLINICS OF NORTH AMERICA, Vol. 17, Issue 1, p. 57 (2012) (DOI 10.1016/j.fcl.2011.11.003).

www.sciencedirect.com/science/article/pii/S1083751511000969. I have reviewed the article and have confirmed that the copy downloaded from libgen.org is identical to that legally available from ScienceDirect. A true and correct copy of Elsevier's copyright registration covering the article is attached hereto as Exhibit C.

13. On or about March 19, 2015, from computers located in the Southern District of New York, Elsevier officials acting at my direction also downloaded from the libgen.org website a file containing chapter 84 of the Elsevier-published "Guyton and Hall Textbook of Medical Physiology."[2] A true and correct copy of this file is attached hereto as Exhibit D. This chapter is legally available to authorized users through ScienceDirect at the URL www.sciencedirect.com/science/article/pii/B9781416045748000840. I have reviewed this file and have confirmed that the copy downloaded from libgen.org is identical to that legally available from ScienceDirect. A true and correct copy of Elsevier's copyright registration in the Guyton and Hall Textbook of Medical Physiology, 12th Edition, is attached hereto as Exhibit E.

C. The Irreparable and Public Harm caused by Defendants and the Need for Injunctive Relief

14. In addition to the harm Sci-Hub and the Library Genesis Project cause to Elsevier and all other major scientific publishers directly as a result of their widespread and large scale infringing activities, the Defendants' activities also harm the scientific community as a whole. Publishers' subscription and per-article fees sustain the scholarly publishing infrastructure, which is fundamental to the (1) dissemination and discovery of scientific research; (2) creation of new journals and content in new and existing fields of research; (3) existence of a well-maintained and definitive record of scientific discovery; and, (4) in some cases, even the academic tenure process. By unlawfully and systematically distributing massive amounts of

[2] JOHN E. HALL, GUYTON AND HALL TEXTBOOK OF MEDICAL PHYSIOLOGY (12th ed. 2011).

publishers' content without authorization, the Defendants are endangering this vital ecosystem on which a thriving scientific community depends.

15. The Defendants' actions also threaten the quality of the materials relied upon by researchers, scientists and medical practitioners who obtain scientific and medical publications through the publishers' platforms. In particular, Elsevier and other scientific publishers take great care to correct or retract published journal articles and other information available on their databases which are later found to be erroneous or flawed. Scientists, researchers and doctors who download articles from the Defendants' websites may not have the advantage of this quality control. Last year, for example, Elsevier alone made several thousand corrections to previously published articles and retracted perhaps several hundred others.

16. The possible harms resulting from an un-curated, rogue library, as Defendants are creating and facilitating, is different from, and goes well beyond, the financial harm inflicted on Elsevier and other publishers around the world as a result of Defendants' illegal content database.

17. In the worst case, this could potentially threaten the safety or health of individuals. For example, a scholarly work could be published with inaccurate information about a drug or other scientific compound, or flawed research results. If a scientist, doctor or researcher obtains the information legitimately, he or she will have access to the most current version of a requested article, including any corrections, or will avoid being exposed to flawed articles that have been retracted. But that is not the case where content is obtained from an un-curated source like the Library Genesis Project or Sci-Hub. By way of example, attached as Exhibit F is a copy of a page from the ScienceDirect database illustrating the message displayed

to readers when an article has been retracted, in this example because the article abstract "contained a drug dosage error which could have serious health consequences."

18. Elsevier has investigated the Library Genesis Project's repository and has found that its treatment of retractions is haphazard. In the worst case, retracted articles can be found in the Library Genesis repository with no indication that a retraction has been issued. This appears to be the case with respect to the article "*The Oncogenic Effects of Constitutive Stat3 Signaling in Salivary Gland Cancer Cells Are Mediated by Survivin and Modulated by the NSAID Sulindac*," which was published in Elsevier's Journal "Oral Surgery, Oral Medicine, Oral Pathology, and Endodontology" in 2009. Although the article has since been retracted, the retraction notice does not appear in the Library Genesis Project repository, nor does there appear to be any other indication on the Library Genesis Project site that the article has been retracted or is in any way invalid.

19. In other cases, the retraction is stored as a separate document, which may be difficult to find or to connect to the retracted article. For example, if a Library Genesis Project User searches for an article which was later retracted by the article's original unique identifier (*e.g.*, DOI), they would only locate the retracted article but *not* the notice that the article has been retracted. Moreover, if a user finds a retracted article using the Library Genesis Project's keyword search function, the retraction notice, even if present in the repository, may be difficult to locate in search results.

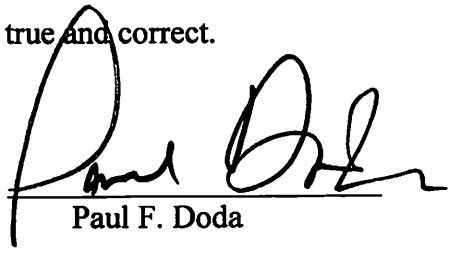
20. Through my work with the Association of American Publishers' Online Piracy Working Group, I am aware that Defendants' illegal piracy activities have harmed, and are continuing to harm, numerous other major publishers of scientific, medical and technical books and journals.

21. Elsevier and other scholarly publishers are not alone in the seriousness of purpose and gravity they attach to a properly curated scientific record. The United States Office of Research Integrity, part of the United States Department of Health and Human Services, has made the following statement in the context of its research misconduct policy, which is equally relevant to the issue at hand:

> Advances in science, engineering, and all fields of research depend on the reliability of the research record, as do the benefits associated with them in areas such as health and national security. Sustained public trust in the research enterprise also requires confidence in the research record and in the processes involved in its ongoing development.[3]

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 6, 2015.



Paul F. Doda

[3] Office of Research Integrity, *Federal Research Misconduct Policy*, 65 Fed. Reg. 76260 (Dec. 6, 2000).